

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Sections 27.60, 27.65, 27.82 and 28.27
Title 14, California Code of Regulations
Re: Changes to Lingcod Seasons, Size and Bag Limits
for Conformance with Federal Regulations

I. Date of Initial Statement of Reasons: April 12, 2004

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: March 19, 2004
Location: Sacramento, CA (teleconference)

(b) Adoption Hearing: Date: June 25, 2004
Location: Crescent City, California

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The Fish and Game Commission (Commission) at its teleconference meeting March 19, 2004 adopted emergency regulations that conformed California's sport fishing regulations for lingcod with the federal recreational groundfish rules adopted by the federal Pacific Fishery Management Council (Council) at its March 7-12, 2004 meeting (50 CFR Part 660). Both the state emergency regulations and the new federal regulations were in effect on April 1, 2004. The federal regulations will be in effect until December 31, 2004 unless modified by the Council. The state emergency regulations will expire on July 31, 2004 if not adopted as permanent. The Department of Fish and Game (Department) is proposing that the regulations adopted by the Commission as an emergency action be made permanent.

The emergency action increased the minimum size limit of lingcod from 24 to 30 inches, increased the fillet size from 16 to 21 inches in length, reduced the bag limit from two to one fish per person, and prohibited retention of lingcod in the months of November and December for California's recreational fishery.

If the emergency regulations are not made permanent, it is likely that the harvest limit for lingcod will be exceeded. If the harvest limit is exceeded, then federal stock rebuilding goals will not be met, which could lead to further decline in the status of the lingcod population. In addition, if the emergency regulations are not made permanent, state and federal regulations would differ, creating confusion for the public and difficulty for Department enforcement staff who would be charged with enforcement of conflicting regulations.

Shared Management Authority

Under existing law, the Council manages and regulates 82 species of groundfish including rockfish, lingcod, California scorpionfish, some flatfish, and some sharks in waters off the states of California, Oregon, and Washington (Magnuson-Stevens Sustainable Fisheries Act, 16 U.S.C. 1851). Under California law, the Commission regulates sport fishing in waters off California for all species, including those managed under federally adopted fisheries management plans.

Since both the Council and the Commission establish regulations for these 82 groundfish species, the Commission routinely acts to bring its sport fishing regulations into conformance with federal rules. These conformance actions by the Commission ensure that state and federal rules for these species are consistent and enforceable.

Federal Management of Lingcod

The Council manages and sets harvest levels and/or optimum yields (OYs) for some groundfish species and species groups. The OYs are set at levels that are expected to prevent overfishing. Management measures are designed to achieve these prescribed harvest levels. These OYs and management measures are adopted by the Council and implemented via regulation by the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS).

The lingcod stock off the coast of California, Oregon and Washington has been formally designated as overfished by NMFS and is currently managed under a rebuilding plan to achieve recovery of the population. A key element of the lingcod rebuilding plan is to constrain catches to the OY to allow the stock to increase to a healthy size within a specified period of time.

Catches Exceed Allowable Limits

Recreational catch data show that the 2003 harvest limits for lingcod were exceeded by California's recreational fishery, as they were in 2002 (Table 1). The 2003 catch information was not available to state or federal fishery managers when 2004 fishery regulations were adopted during the

fall of 2003. Allowing continued excessive harvest of lingcod in California's recreational fishery in 2004 is inconsistent with federal policies for management of overfished stocks.

TABLE 1 – Comparison of OYs and Acceptable Biological Catches (ABCs) with reported catches, 2002-2003.

State	Fishery	2002 OY = 577, ABC = 745 Reported Catch (MT)	2003 OY = 651, ABC = 841 Reported Catch (MT)
California	Commercial	81	52
	Recreational	506	1000
Oregon	Commercial	82	96
	Recreational	92	64
Washington	Commercial	94	107
	Recreational	197	51
Total		1052	1370

Following the high catches in 2002, a six-month seasonal closure was implemented in 2003 to slow the take of lingcod in California's recreational fishery. However, despite the six-month closure, the California recreational sector was again the principal cause of excessive coastwide catches in 2003. Not only were these catches disproportionate relative to California's share of the 2003 coastwide OY, but in fact, the California recreational catch alone surpassed the entire coast's Acceptable Biological Catch (ABC) (Table 1). When catches occur in excess of the ABC on any stock, it is considered "overfishing" as these harvest rates are not sustainable. In the event that overfishing occurs on a stock which is already declared as "overfished," the stock recovery which is required by federal law is at risk.

Although the coastwide OY for lingcod is not explicitly allocated by law between the states or between the commercial and recreational fishery sectors, the Council has allotted each state and sector a portion of the take. For the California recreational fishery, in 2003, this allotment was 215 metric tons (MT). However, the California recreational catch for 2003 totaled 1,000 MT nearly five times this allotment. For 2004, the allotment for the California recreational fishery has been increased to 346.8 MT, reflecting improved recruitment and higher stock biomass. Despite the increased allotment for 2004, other fishery sectors again will be impacted if California's recreational fishery continues to take more than its share.

As a result of these impacts, and given the potential for additional impacts if catches were not curtailed, the Commission adopted emergency

regulations on March 19, 2004 (effective April 1, 2004, Office of Administrative Law #Z-04-0322-05E). The Department recommended that the emergency regulations be made permanent to continue to constrain the state's recreational lingcod catch for the remainder of 2004.

Projected Catch Savings

The Department anticipates that the recreational catches of lingcod in California will be below 346.8 MT (the 2004 recreational allowance for lingcod in California) if the state and federal regulations which were in effect on April 1, 2004 (*i.e.*, minimum size limit to 30 inches, daily bag limit to one lingcod per person, and no take in the months of November and December) remain in effect through December 31, 2004.

At its April 2004 meeting, the Council also implemented new depth and seasonal closures for recreational groundfish fishing to reduce take of canary rockfish. Although these closures were designed to protect canary rockfish, the regulations are expected to reduce take of lingcod as well. Despite the projected savings from these depth and seasonal closures, the proposed measures for lingcod are still needed to keep the recreational catch below the recreational allowance for 2004.

Change in Fillet Size Limit

Section 27.65, Title 14, CCR, allows recreational anglers to fillet fish aboard vessels prior to returning to the dock. However, for fish that are subject to minimum size limits on total length, a regulation establishing a minimum size limit for fish fillets is needed. The emergency regulations increased the fillet minimum size limit for lingcod from 16 inches (which corresponds to a total length minimum size limit of 24 inches) to 21 inches (which corresponds to a total length minimum size limit of 30 inches). The correlations between total length and fillet length were based on prior sampling data.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205, 215, 220, 5508, 5509, 7071, and 8587.1, Fish and Game Code.

Reference: Section(s) 200, 202, 205, 206, 215, 220, 5508, 5509, 5517, 7120 and 8585.5, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change: None.
- (d) Identification of Reports or Documents Supporting Regulation Change:

Pacific Fishery Management Council. December 2003. Amendment 16-2: Rebuilding plans for darkblotched rockfish, Pacific ocean perch, canary rockfish, and lingcod. Environmental impact statement and regulatory analyses.

Assessment of Lingcod (*Ophiodon elongatus*) for the Pacific Fishery Management Council in 2000. Jagielo, T., et al. July, 2000.

Federal Register, January 8, 2004. Department of Commerce, National Oceanic and Atmospheric Administration, 50 CFR Part 660. Proposed Rules. Page 1380-1414.

Federal Register, March 9, 2004. Department of Commerce, National Oceanic and Atmospheric Administration, 50 CFR Part 660. Final Rules. Page 11064-11124.

Proposed Acceptable Biological Catch and Optimum Yield Specifications and Management Measurements for the 2004 Pacific Coast Groundfish Fishery. Final Environmental Impact Statement. Pacific Fishery Management Council, December 2003.

NMFS 2001, Marine Angler Expenditures in the Pacific Coast Region, 2000. NOAA Technical Memorandum, NMFS-F/SPO-49, November 2001.

Pacific Fishery Management Council, Groundfish Management Team (GMT) Report on Status of Fisheries and Inseason Adjustments, Exhibit C.7.b. Supplemental GMT Report, April 2001, 6 pp.

Pacific Fishery Management Council, Groundfish Management Team (GMT) Report on Inseason Adjustments, Exhibit C.7.b. Supplemental GMT Report 2, April 2001, 2 pp.

- (e) Public Discussions of Proposed Regulations Prior to Notice publication:

Fish and Game Commission Meeting (teleconference) on March 19, 2004, and Pacific Fishery Management Council Meeting held March 7-12, 2004.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

Various size limits and seasonal closures were considered by the Council's Groundfish Management Team to achieve the required reduction in the recreational harvest of lingcod in California.

(b) No Change Alternative:

If the Commission does not adopt the proposed regulations, it is likely that the harvest limit for lingcod will be exceeded. If the harvest limit is exceeded, then federal stock rebuilding goals will not be met, which could lead to further decline in the status of the lingcod population. The lingcod stock off the coast of California, Oregon and Washington has been formally designated as overfished by NMFS and is currently managed under a rebuilding plan to achieve recovery of the population. A key element of the lingcod rebuilding plan is to constrain catches to specified harvest limits. In addition, if the Commission does not adopt the proposed regulations, state and federal regulations would differ, creating confusion for the public and difficulty for Department enforcement staff.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

It is anticipated that the proposed regulations will reduce recreational take of lingcod in California. The proposed regulations are expected to have a coastwide economic impact affecting business, although they are not

expected to significantly affect the ability of California businesses to compete with businesses in other states. The short term losses to businesses are expected to be offset, to some degree, in the long term by improvements in the status (abundance, size, and quality) of lingcod and nearshore fish stocks. Individual sport fishermen and small businesses that service California's ocean sportfishing activities will be primarily impacted. Commercial passenger fishing vessels (CPFVs) that rely in large part on taking passengers fishing for rockfish and lingcod comprise a small-business sector that will be directly impacted, in addition to other businesses which depend on private boat and shore-based recreational angling opportunities such as bait and tackle manufacturers.

California CPFV operators often target rockfish and lingcod during winter months when resident and migratory game fishes are not as active or are unavailable. Information from the National Marine Fisheries Service (NMFS) estimates that anglers aboard CPFVs take roughly 58.4 percent by number of all ocean rockfishes caught by all recreational fishermen in California. Based on an NMFS survey of year 2000 angler expenditures, total party boat charter fees paid annually by resident and nonresident passengers amounted to about \$64.1 million for California. However, few recreational trips are only targeting lingcod. Instead, lingcod are caught in association with rockfish, since recreational fishing usually entails catches of assorted bottom fish species in the aggregate. Consequently, it is difficult to estimate what portion of these expenditures is due exclusively to availability of lingcod. Given that some recreational take of lingcod will still be allowed under the proposed regulations, and other bag limits for other species of bottom fish will not change, this is not expected to have a significant economic impact on recreational fisheries.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None

Informative Digest/Policy Statement Overview

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